

### REMARKS

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1-10 remain pending. Claims 11-18 have been added through the Amendment. Claims 1 and 2 are independent. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

#### *Allowable Subject Matter*

Applicants appreciate that claims 3-10 are indicated to define allowable subject matter.

#### *Claim Rejections - 35 U.S.C. §103(a)*

Claims 1 and 2 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,539,462 to Lee et al. ("Lee") in view of U.S. Patent No. 6,211,915 to Harada ("Harada"). Applicants submit the Examiner has failed to establish a *prima facie* case of obviousness and traverse the rejection.

For a 35 U.S.C. § 103 rejection to be proper, a *prima facie* case of obviousness must be established. *See M.P.E.P. 2142*. One requirement to establish *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. *See M.P.E.P. 2142; M.P.E.P. 706.02(j)*. Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn. In this instance, the combination of Lee and Harada fails to teach or suggest each and every limitation of claims 1 and 2.

Independent claims 1 and 2 recite a method and means for, *inter alia*, taking an image of a subject by a solid image taking device including a first image taking element having a plurality of pixels and a second image taking element having a plurality of pixels smaller than those of the first image taking element; calculating a first evaluation on contrast obtained by integrating high-frequency components of a first image signal representing an image of the subject taken by the first image taking element; and calculating a second evaluation on contrast obtained by

integrating high-frequency components of a second image signal representing an image of the subject taken by the second image taking element.

The Examiner relies on col. 4, lines 38-41 and 54-57 of Lee to disclose calculating first and second evaluations on contrast obtained by integrating high-frequency components of an image signal. However, Applicants submit that Lee does not actually disclose obtaining said evaluations by integrating said high-frequency components. As expressly stated in col. 4, lines 41-47, Lee merely discloses generating an H\_peak function for the evaluation function by determining a peak value for each horizontal scan line of the image scene contained within the evaluation window and summing the peak values for each horizontal scan line. Applicants submit that Lee does not disclose calculating evaluations on contrast in the manner recited in the independent claims. Harada has not been, and indeed cannot be, relied upon to cure this deficiency of Lee. Therefore, at least because Lee does not disclose obtaining said evaluations by integrating the high-frequency components, claims 1 and 2 are distinguishable from Lee in view of Harada.

Furthermore, Applicants respectfully submit that one of ordinary skill in the art would not have been motivated to combine Lee and Harada to arrive at the present invention. Another requirement to establish *prima facie* case of obviousness is that there must be a suggestion or motivation within the cited reference(s) to modify the reference(s) as proposed in the Office Action. *See M.P.E.P. 2143.01*. The cited reference must be considered in its entirety including disclosures that teach away from the claimed invention. *See M.P.E.P. 2141.02*. If the cited reference(s) teach away from the claimed invention, then the combination is improper and the rejection must fail.

In the Office Action, the Examiner concedes that Lee does not disclose that the image taking device includes a first image taking element having a plurality of pixels and a second image taking element having a plurality of pixels smaller than those of the first image taking element, and that the first and second evaluations on contrast are performed for an image of the subject taken by the first and second image taking elements, respectively. The Examiner relies upon Harada to allegedly teach these conceded deficiencies of Lee.

Although Harada may disclose two types of image taking elements, "high-sensitive light receiving portion 11" and "low-sensitive light receiving portion 12", Harada does not disclose or suggest adjusting the focus on the basis of two evaluations obtained from the two types of image taking elements. In fact, Harada is not directed to adjusting focus in any manner. Though Lee may disclose calculating two evaluations, these evaluations appear to correspond to two different frequency components of the same image signal. See Lee, col. 4, lines 18-23. Neither Lee nor Harada, alone or in combination, provide any suggestion or motivation for "calculating a first evaluation on contrast obtained by integrating a high-frequency component of a first image signal representing an image of the subject taken by the first image taking element" or "calculating a first evaluation on contrast obtained by integrating a high-frequency component of a second image signal representing an image of the subject taken by the second image taking element".

Accordingly, Applicants submit that claims 1 and 2 are distinguishable from Lee in view of Harada. Claims 3-10 depend from claim 2, directly or indirectly. Therefore, for at least the reasons stated with respect to claim 2, claims 3-10 are also distinguishable from Lee in view of Harada.

Therefore, Applicants submit that claims 1-10 are patentable over Lee in view of Harada and respectfully request that the rejection of claims 1-10 under §103(a) be withdrawn.

#### *New Claims*

New claims 11-18 have been added through this Reply. Applicants respectfully submit that claims 11-18 are allowable at least for their dependence upon independent claim 1. No new matter has been entered.

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Notice of same is earnestly solicited.

**Conclusion**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Michael K. Mutter Reg. No. 29,680 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

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